

Christopher M. Schierloh  
Martin F. Casey  
**CASEY & BARNETT, LLC**  
65 West 36<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, New York 10018  
(212) 286-0225  
Attorneys for Plaintiff

**JUDGE SWAIN**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**11 CIV 1661**

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MUND & FESTER GMBH & CO. KG a/s/o  
COUTINHO & FERROSTAAL GMBH,

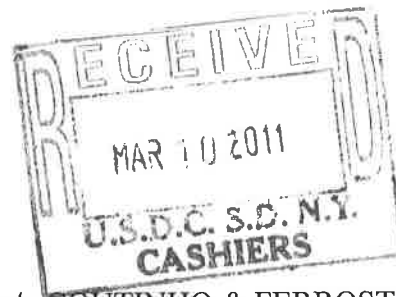
**COMPLAINT**

Plaintiff,

- against -

M/V AURORA SAPPHIRE, her engines, boilers,  
tackle, furniture, apparel, etc *in rem*; STX  
PANOCEAN CO., LTD., *in personam*,

Defendants.  
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Plaintiff, MUND & FESTER GMBH & CO. KG a/s/o COUTINHO & FERROSTAAL  
GMBH, by and through its attorneys, CASEY & BARNETT, LLC, as and for its Complaint,  
alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. §1333.
2. At all material times, MUND & FESTER GMBH & CO. KG (hereinafter "M&F" or "Plaintiff") was and is a corporation organized and existing by virtue of the laws of a foreign state with an office and place of business located at Trostbrücke 1, 20457 Hamburg, Germany

and was the subrogated underwriter of a consignment of steel laden on board the M/V AURORA SAPPHERE, as more specifically described below.

3. At all material times, COUTINHO & FERROSTAAL GMBH (hereinafter “Coutinho”) was and is a corporation organized and existing by virtue of the laws of a foreign state with an office and place of business located at Hohenzollernstrasse 24, D-22767, Hamburg, Germany and was the owner, consignee and/or assured of a consignment of steel laden on board the M/V AURORA SAPPHERE, as more specifically described below.

4. At all material times, defendant, STX PANOCLEAN CO., LTD. (hereinafter “STX PanOcean”) was and is a corporation organized and existing by virtue of the laws of a foreign state with an office and place of business located at 201 Route 17 North, 3<sup>rd</sup> Floor, Rutherford, New Jersey 07070, who owns, operates, manages and/or charters ocean-going vessels, including the M/V AURORA SAPPHERE, that operates between various foreign and domestic ports and, in particular, within this district and was the owner, owner *pro hac vice*, charterer, manager and/or operator of the M/V AURORA SAPPHERE, and at all relevant times, was and is doing business within the jurisdiction of this Honorable Court.

5. Upon information and belief, at all times hereinafter mentioned, defendant, M/V AURORA SAPPHERE was and still is a vessel operated as common carrier of goods in ocean transportation for hire and upon information and belief, is now, or will be during the pendency of this action, within this District and subject to the jurisdiction of this Honorable Court.

6. Plaintiff brings this action on its own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the said consignment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

**RELEVANT FACTS**

7. On or about February 15, 2010, a consignment, consisting of 131 bundles of steel, then being in good order and condition, was delivered to the M/V AURORA SAPPHIRE and STX PanOcean and/or their agents at the port of Pohang, Korea for transportation to Mobile, Alabama in consideration of an agreed upon freight, pursuant to STX PanOcean bill of lading number POBUKPOMOB100009 dated February 15, 2010.

8. Thereafter, the aforementioned consignment was loaded aboard the M/V AURORA SAPPHIRE, STX PanOcean bill of lading number POBUKPOMOB100009 was issued and the vessel sailed for its intended destination.

9. Upon discharge, it was discovered that the consignment was not in the same good order and condition as when received by the defendants, but instead, had suffered physical damage during transit.

10. As a result of the damages sustained to the shipment, Coutinho sustained a loss.

11. The damage to the cargo was not the result of any act or omission of the plaintiff but, to the contrary, was due solely as the result of the negligence, fault, neglect, breach of contract of carriage, and bailment on the part of the defendants.

12. At all times relevant hereto, a contract of insurance for property damage was in effect between Coutinho and M&F, which provided coverage for, among other things, loss or damage to the consignment.

13. Pursuant to the aforementioned contract of insurance between Coutinho and M&F, monies have been expended on behalf of Coutinho to the detriment of M&F due to the damages sustained during transit.

14. As M&F has sustained damages as a result of said expenditures, expenditures rightly the responsibility of the defendants, M&F has an equitable right of subrogation and is subrogated, to the extent of its expenditures, to the rights of its insured with respect to any and all claims for damages against the defendants.

15. By reason of the foregoing, plaintiff has been sustained losses which will be shown with specificity at trial, no part of which has been paid, although duly demanded, which are presently estimated to be no less than \$5,000.00.

**WHEREFORE**, Plaintiff prays:

1. *In rem* service of process be issued against the M/V AURORA SAPPHIRE, her engines, boilers, tackle, furniture, apparel, etc.; that the vessel be seized and that all those claiming an interest in her be cited to appear and answer under oath both all and singular the matters aforesaid;

2. The M/V AURORA SAPPHIRE her engines, boilers, tackle, furniture, apparel, etc., be condemned and sold to satisfy the judgments herein in favor of plaintiff;

3. The Court order, adjudge and decree that defendants, STX PANOCEAN CO., LTD. and the M/V AURORA SAPPHIRE, be found joint and severally liable and pay to plaintiff the losses sustained herein, together with pre-judgment and post judgment interest thereon and their costs and;

4. That this Court grant to plaintiff such other and further relief as may be just and proper.

Dated: New York, New York  
March 10, 2011  
260-137

**CASEY & BARNETT, LLC**  
Attorneys for Plaintiff

By:



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Martin F. Casey  
65 West 36<sup>th</sup> Street, 9<sup>th</sup> Floor  
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